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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
Implementation of Section 26 )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )

PP Docket No. 93-21

Inquiry into Sports Programming )  
Migration )

To: The Commission

FURTHER COMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune") submits these comments in response to the Commission's Further Notice of Inquiry, FCC 94-65, released March 11, 1994 ("Further Notice").

A. Baseball

The Further Notice, at ¶ 22, notes press reports that Madison Square Garden Network and WPIX(TV), operated by Tribune, have reached agreement for over-the-air carriage of 50 New York Yankees games per year for the next three years. The Commission asks for information concerning the contract terms.

The parties to the agreement agreed to keep its terms confidential. However, WPIX can verify that press reports concerning the deal are substantially accurate. See, e.g., "Yankees stay on free TV," Broadcasting & Cable, March 7, 1994 at 22-23.

WPIX considered it very important to keep a slate of Yankees games on free television in New York and on the station

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that has served as the Yankees' home since 1951. It did so at considerable financial sacrifice: Madison Square Garden Network will pay WPIX under the 1994-96 agreement about half of what it paid the station for the use of its airtime under the previous WPIX/MSG contract. In addition, as reported in the media, the agreement does contain revenue-sharing provisions that are triggered if MSG advertising revenues above specified levels are reached in any year. (The revenue sharing formula is contingent on the target revenue levels being exceeded; it contains no guarantees.)

As Tribune has urged in previous filings in this Inquiry\*, and in answer to the Commission's renewed question (Further Notice at ¶ 11), there is a strong governmental interest in promoting free public access to televised sports programming. Tribune submits that Congress should consider the various means of promoting free public access to televised sports after the Commission completes its final report in this Inquiry.

#### B. Professional Basketball

The Commission inquires in the Further Notice about two additional, related matters in which Tribune is intensely involved: sports antitrust exemptions and their effect on the sports programming market (id., ¶¶ 13, 16) and the litigation

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\* Comments of Tribune Broadcasting Company, filed March 29, 1993; Reply Comments of Tribune Broadcasting Company, filed April 12, 1993; Supplemental Comments of Tribune Broadcasting Company, filed May 6, 1993.

related to limitations on superstation telecasts of professional basketball games (*id.*, ¶ 21).

The legality of the NBA's new and more severe restrictions on superstation telecasts -- a complete prohibition on NBA clubs' right to contract with superstations for their local telecasts, and a fallback "tax" on such telecasts if the ban is declared illegal -- was tried before the United States District Court for the Northern District of Illinois in late 1993 and early 1994.\* The case is now in the final stages of post-trial briefing, and is awaiting decision.

Contested in the case are the following issues, among others:

1. The NBA's attempt to prohibit all member teams from having their games telecast over superstations such as Tribune's WGN-TV. This would require modifying a permanent injunction the court entered in 1991, which permits the telecast of at least 25 Chicago Bulls games per year over WGN-TV.\*\* Plaintiffs argue that this ban, which was adopted by vote of the NBA owners and was specifically included in the text of the NBA's new contract with NBC, violates federal antitrust law.

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\* *Chicago Prof'l Sports Ltd. Partnership and WGN Continental Broadcasting Co. v. National Basketball Ass'n*, No. 90 C 6247 (N.D. Ill.). The Chicago Bulls and Tribune's WGN-TV are plaintiffs in the case.

\*\* This injunction was entered after a trial in 1990, and was upheld on appeal. *Chicago Prof'l Sports Ltd. Partnership v. NBA*, 754 F. Supp. 1336 (N.D. Ill. 1991), *aff'd*, 961 F.2d 667 (7th Cir.), *cert. denied*, 113 S. Ct. 409 (1992).

2. The NBA's attempt to set a fee or "tax" on teams who choose to have their games telecast over superstations, in the event the court holds the total ban unlawful under the antitrust laws. Estimates of the size of the tax, as applied to WGN's Bulls telecasts, varied at trial from \$114,000 to \$250,000 per game. Plaintiffs argue that the tax, which would have the intended effect of reducing the number of televised games, violates federal antitrust law.

3. The NBA's rule precluding the broadcast, only by superstations, of NBA games on the same night that games are telecast by the NBA's two authorized national cable outlets under its new cable contract: Turner Network Television (TNT) and WTBS. This rule is also embodied in provisions of the NBA/Turner contract. Non-superstations and local and regional cable networks are all permitted to televise games in competition with the national cable networks. Plaintiffs argue that this restraint, by reducing the number and quality of Bulls games WGN-TV can telecast, and effectively precluding such telecasts three nights per week, violates federal antitrust law.\*

Tribune wishes to inform the Commission that the National Basketball Association claimed at trial that its anti-superstation restrictions are immune from attack under the antitrust laws under two theories: under the Sports Broadcasting

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\* While the restraints at issue in the litigation are directed against superstations, the NBA's restrictions operate with equal force against WGN-TV's over-the-air viewers in the 3 million television homes in the Chicago market.

Act of 1961, 15 U.S.C. §§ 1291 et seq.\*, and because the league is a "single economic enterprise" under *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

While Tribune is confident that the courts will reject the NBA's legal arguments, we think it is significant that the NBA considers its action not only a "reasonable" restraint of trade, but one totally exempt from antitrust scrutiny by act of Congress. Tribune submits that such a contorted view of the Sports Broadcasting Act is wrong as a matter of law. But it is also important that Congress be made aware that at least one sports league is trying to stretch its limited exemption from the nation's antitrust laws beyond anything heretofore contemplated -- in a case where the league action is specifically intended to reduce the number of televised games available to viewers and to limit competition between its national telecasts and member clubs' local broadcasts.

\* \* \* \* \*

The Commission has also inquired about the status of free-television rights to Philadelphia 76ers games. Further Notice at ¶ 20. WPHL-TV, Philadelphia, a Tribune station, had carried a package of seven 76ers games for each of the past three seasons, ending with 1993-94.

This three-season over-the-air package was part of an


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\* The NBA has made similar claims in earlier phases of the litigation. They have been rejected. See *Chicago Prof'l Sports, supra*; *Chicago Prof'l Sports Ltd. Partnership v. NBA*, 808 F. Supp. 646 (N.D. Ill. 1992).

overall seven-year arrangement that took effect in the 1991-92 NBA season. Under this arrangement, telecast rights to all 76ers games were licensed to the SportsChannel and Prism cable services, with the exception of the three-year, seven-game WPHL-TV package identified above. Thus, for the next four years, rights to all regular-season 76ers games will be controlled locally by cable outlets. No games are under license to local over-the-air stations for broadcast after the end of the current season.

Respectfully submitted,

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